

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4724 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

-----  
ISHWARBHAI RUGHNATHBHAI NAI

Versus

CHIEF GENERAL MANAGER  
-----

Appearance:

1. Special Civil Application No. 4724 of 1998  
MR CB DASTOOR for Petitioner No. 1  
MR PRANAV G DESAI for Respondent No. 1-3
- 

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 16/02/2004

ORAL JUDGEMENT

The petitioner states that though it is the mistake of  
the respondent-Bank, his claim for permanent absorption

in the Bank is being denied to him as the Bank is not inclined to rectify its mistake. He has, therefore, filed this petition for issuance of appropriate writ or order or direction to the Bank to consider his case and to absorb him in its service on permanent basis. According to him, he joined the service of the respondent-Bank since 02.11.1982 as Full Time Messenger. However, he was also required to render services as Part Time Sweeper to do miscellaneous work. It is the say of the petitioner that his appointment was for short duration on different occasions during the period between 2.3.1982 till 13.6.1998. It is his case that the Bank had framed certain rules/ policy with regard to absorption of temporary employees and the same were communicated to the Branch Manager, State Bank of India, vide the communication dated 06.1.1988. Vide the said communication, it was brought to the notice of the Branch Manager that by virtue of advice of the head office to the effect that the Bank had entered into an agreement with the All India State Bank of India Staff Federation, certain categories of temporary employees in subordinate cadre were required to be granted permanent appointment against the vacancies likely to arise during the period between 1987-1991, if they fulfilled requisite criteria. For that purpose, following categories of employees working on temporary basis were required to be considered.

- 1] Those who had completed 240 days' temporary service in 12 months or less after 1.7.1975;
- 2] Those who had completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1.7.1975 ;
- 3] Those who had completed a minimum of 30 days aggregate temporary service in any calendar year after 1.7.75 or a minimum of 70 days aggregate temporary service in any continuous block or 36 calendar months after 1.7.75"

It is, therefore, the case of the petitioner that by virtue of the clause III of this communication, he was entitled to be made permanent for which the select list was already prepared. It is his grievance that despite the fact that he had become eligible in the select list that was made in the year 1989, his name was not

included. This was due to the fact that there was mistake committed by his office by not sending this relevant information to the head office. It is his grievance that because of this act of omission, he was not included in the select list prepared for the year 1989 and by mistake he was included in the select list which was prepared in the year 1992, which according to him was never acted upon.

Mr. Dastoor, learned advocate appearing for the petitioner has submitted that there is no dispute that the petitioner by virtue of the clause III of the aforesaid communication had become eligible for being made permanent much prior to the year 1998. The concerned officer ought to have forwarded the relevant information to the head office of the bank, but he had not done so. The petitioner therefore, left out and not considered for 1989 select list. It was not his fault. When this mistake was brought to the notice by the Dy. General Manager to the General Manager on 22.1.1997, nothing was done and he was intimated by the letter dated 20.7.1998 regarding Bank's inability to give him status of permanent employee. It is, therefore, submitted that had he been included in the list of 1989 this injustice would not have been caused to him.

On going through the record of the petition, it is clear that there is no dispute that the petitioner was eligible for being considered for grant of status of permanent employee. He stood covered under Clause III of the communication dated 06.1.1988, whereby the criteria for absorption of temporary employees was intimated to the Branch Office. This criteria was laid down in view of the bank entering into an agreement with the All India State Bank of India Federation. It was, therefore, the duty of the Branch Manager to forward the information to the head office in time so as to enable the Head Office to include the petitioner in the select list. The fact remains that he was never included in the list of 1989. The reason that is being advanced by the respondents, as it can be seen from the affidavit in reply, is that the petitioner had not supplied the information to them in time. It is, however, a matter of record that the information was required to be supplied by the concerned branch office. The communication dated 22.1.1997 addressed to the General Manager by the Deputy General Manager, whereby it was requested to permit him to incorporate the petitioner's name in the existing panel of 1989 so as to give him justice and to give him appointment on merits at an appropriate time. When it was thought it fit by the Dy. General Manager to redress

his grievance keeping in view that the petitioner was justified in making such grievance, the Bank ought to have included in the list of 1989 but that has not been done. It is, therefore, clear that even according to the concerned officer of the Bank himself the petitioner ought to have been included in the list of 1989 which was acted upon and office ought to have been absorbed him on permanent basis. It was not proper for the Bank to intimate the petitioner vide order dated 20.7.1998 that though he was called for the interview on 8.1.1992 and he was empaneled in the waiting list prepared in the year 1992, the said list was scrapped after 31.3.1997, and none of the candidates empaneled in the list of 1992 could be given employment. If the petitioner had been empaneled in time, i.e. in the list of 1989 in all probabilities, he would have received the employment on permanent basis. In view of the aforesaid, the Bank is required to be directed that instead of treating him in the panel prepared in the year 1992, he should be treated as empaneled in the list of 1989 and on that basis, he may be called for the interview and to consider his case without taking the plea of age bar, and if found suitable keeping in view of the aforesaid criteria, offer him the employment on permanent basis. The petition, is, therefore, partly allowed. Rule is made absolute to the aforesaid extent only.

17th February, 2004.

After the judgment was dictated with aforesaid direction, today i.e. 17th February, 2004, Mr.P.G.Desai has stated that instead of holding interview, the petitioner may be directed to make a representation which may be considered on its merits, in light of the observations made in this judgment, since the Bank has discontinued the practice of holding interview for the purpose of making permanent appointment. Mr.Dastoor has no objection to it. It is, therefore, directed that instead of Bank calling the petitioner for interview, the petitioner will now make a representation to the Bank and the Bank will consider the same in light of this judgment and take its decision on or before 30th April, 2004. The petitioner is, therefore, directed to make a representation to the General Manager, Personnel and HRD, Local Head Office at Ahmedabad within three weeks of the judgment.

[ AKSHAY H.MEHTA, J ]

